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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CAN'T STOP PRODUCTIONS, INC.,

4 Plaintiff,

5 v.

6 17 Civ. 6513(CS)

7 TELEPHONE CONFERENCE

8 SIXUVUS, LTD., et al.,

9 Defendants,

10 v.

11 KAREN WILLIS, doing business as
12 Harlem West Entertainment,

13 Intervenor.

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16
17 United States Courthouse
18 White Plains, N.Y.
19 June 25, 2020

20 Before: THE HONORABLE CATHY SEIBEL, District Judge

1 APPEARANCES
2

3 **EISENBERG, TANCHUM & LEVY**
4 Attorneys for Plaintiff
5 STEWART L. LEVY

6 **ADELMAN, MATZ, P.C.**
7 Attorneys for Defendants
8 SARAH MICHAL MATZ

9 **KAREN WILLIS, Pro Se Intervenor**

1 THE DEPUTY CLERK: Good afternoon, Judge.

2 This matter is Can't Stop Productions v. Sixuvus. On
3 the line we have plaintiff's counsel, Mr. Stewart Levy, we have
4 for defendants Ms. Sarah Matz and the Intervenor, Ms. Karen
5 Willis. Julia is on the line and Christina is on the line.

6 THE COURT: Very good.

7 Good afternoon, everyone.

8 Let me remind you, if you speak, the first word out
9 of your mouth should be your last name. We are on the record
10 and the reporter needs to know up front exactly who's speaking.
11 So don't say this is Stewart Levy for plaintiff. Just say Levy
12 and then whatever it is you have to say so that she can get the
13 transcript right.

14 And for the sake of the reporter, we'll skip the
15 usual pleasantries and get right down to it.

16 I got a letter from Ms. Willis June 9th, docket entry
17 279, I believe requesting that I strike defendant's opposition
18 to her motion to intervene and strike the defendant's
19 cross-motion on the grounds that I don't have jurisdiction,
20 which I didn't really understand.

21 So my first question is, Ms. Willis, you better
22 explain what you believe is the problem with jurisdiction.

23 MS. WILLIS: Okay. Good afternoon, your Honor.

24 Your Honor, I'm not interested in going through the
25 motions here any longer. Plaintiff and defendants have rather

1 upended and rendered intervention moot, futile, unless or until
2 the issue of the settlement of the claims in this case is
3 resolved now either through immediate dismissal of the case, as
4 requested by plaintiff and defendant, or by an order to show
5 cause why the case should not be dismissed in light of the
6 settlement and request for dismissal. Now, unless that
7 happens, we don't get to intervention anyway.

8 So I think barring an order to show cause why the
9 case should not be dismissed, which would allow me an
10 opportunity, at least a first opportunity, to show why the case
11 should be dismissed, I don't think it's within the Court's
12 power, jurisdiction, to prolong the case in the face of a
13 settlement and request for dismissal unless, of course, the
14 Court knows exactly why the case should not be dismissed and,
15 therefore, sort of get on with it and deny, with prejudice,
16 plaintiff's and defendants' request for dismissal.

17 So that's really where we are here. And so I think
18 that any type of opposition to intervention is futile. It's
19 circular and must be stricken, must be stricken, because they
20 know that they have a request for dismissal here.

21 I have had a long talk with my husband's lead counsel
22 here and he has assured me, your Honor, that what Stewart Levy
23 stated in this letter and as well as what the defendants have
24 stated time and time again on the record, that there's nothing
25 to intervene in right now. There really isn't. And so the

1 only way I see now, your Honor, to intervene is I would have to
2 be successful at avoiding -- you know, avoiding their
3 settlement agreement, and I can't do it in the context of
4 what's happening right now. Maybe, with an order to show
5 cause, I could start that process, but, you know, it's sort of
6 similar to what they did with the initial settlement that was
7 voided where I had to take an action to void the settlement to
8 show the Court why that settlement was not valid and then the
9 Court had to restore the case to the calendar.

10 But, finally, here, your Honor, they have sort of --
11 without my permission and knowledge, they're saying, hey, we've
12 settled the case; you have an actual request for dismissal and
13 order before you and unless that's dealt with or until that's
14 dealt with, we can't go anywhere. If the case gets dismissed,
15 we don't get to intervention.

16 THE COURT: I'm just as baffled as I was.

17 The settlement occurred months ago, and this issue
18 was raised, if I remember correctly, at our conference back in
19 February, and I forgot how it was raised, but the question came
20 up of whether there is anything in which to intervene if the
21 plaintiff and the defendants resolved their differences, and,
22 you know, it's quoted in Ms. Matz' letter, I said the briefs on
23 the motion to intervene should include not only the usual
24 factors governing intervention, such as whether it should be
25 ^permissive or as of right "but also whether the fact that the

1 licensor has now released its claims means there's nothing to
2 intervene on." So that opportunity to address that issue has
3 come and gone. And although I will admit I haven't sunk my
4 teeth into the motion papers yet, apparently that's one of the
5 arguments defendants made and that has gone unopposed. So I
6 don't understand why I would now, four months later, set up a
7 whole second briefing schedule on an issue that we already
8 talked about.

9 So if what I'm hearing, and maybe I'm not hearing it
10 correctly, but if what I'm hearing is, Ms. Willis, you are not
11 interested in pursuing the motion to intervene, I think that
12 means everybody's walking away, and I'm perfectly happy to have
13 that done, but if what you're asking for is an opportunity now
14 to address an issue that I invited you to address in February,
15 the answer is no.

16 MS. WILLIS: Your Honor, no, I'm simply saying that,
17 in light of the settlement of the claims and in light of the
18 order, the only way I see to prevent that from occurring is to
19 show why. But, in any event, my -- if I were to show the Court
20 why -- or if I were in a position, for example, to show why it
21 should not be dismissed, even, you know, if I did it three
22 months ago, we don't get to that issue, your Honor, if the case
23 is actually dismissed. We don't even get to intervention
24 anymore.

25 THE COURT: Yes.

1 MS. WILLIS: So I'm not in a position anymore. I'm
2 not in a position. I've had a good talk with my husband's
3 counsel. I'm not in a position to stop this -- this -- you
4 know, this settlement as well as the request for dismissal. I
5 can't stop it. I don't see any grounds right now to do so.

6 THE COURT: Well, the reason I didn't -- or the
7 reason why, you know, I didn't take any action on the
8 settlement is because you opposed it and asked me not to
9 approve the settlement or effectuate the settlement. So we
10 waited and I said, fine, I'm not going to ram the settlement
11 down your throat until you've had a chance to be heard on the
12 issue of what effect it may have on your application to
13 intervene. And that's what we spent the last four months
14 working on.

15 So I'm still not clear. I've been holding off on
16 doing anything in relation to the settlement and now, frankly,
17 if I look back on February 6th, I think I was asked to sign a
18 proposed order. And let me pull it up so that I can be clear
19 on what it says. I was asked to sign a proposed order and at
20 that time, I think the very next day -- yes, the proposed order
21 is docket entry 262 and 260 and 261 were letters from you,
22 Ms. Willis, saying you heard this settlement is coming and you
23 think it's wrong and it ought to be held up and you're opposed
24 to me dismissing the case, and as a result, when we had our
25 conference on February 6th, I didn't dismiss the case and I

1 directed that the parties briefing address the issue. And like
2 I said, I haven't sunk my teeth into what the parties said on
3 that issue, but motion papers were filed and opposition and
4 cross-motion was filed and one of two things is going to
5 happen. Either I'll get to that motion in the ordinary course
6 or if, Ms. Willis, you're telling me that, based on discussions
7 you had with your husband's lawyer or your own research or
8 whatever, you no longer want to pursue intervention in this
9 case, then I'll deny your motion as moot and I'll deny the
10 cross-motion as moot and I'll enter the order of settlement,
11 although I will tweak it with respect to the bond, and we'll
12 all be done. So which of those things do you want me to do?

13 MS. WILLIS: So, your Honor, so that the record's
14 clear, I agree with most of it, but, so that the record is
15 clear here, I'm simply saying that I believe that I'm not in
16 the position -- based on the settlement before the Court right
17 now and based on the request for a dismissal, I don't believe
18 that I'm in the position to actually prevent that. However,
19 for the record, I believe that the only way to sort of salvage
20 this situation is I would have to actually challenge at some
21 point, if I chose to do so, the settlement itself as being
22 invalid.

23 So there are two independent issues. So, yes, your
24 Honor, I'm not -- I'm simply saying I don't think that I can do
25 anything. It's moot. My intervention is moot as far as I'm

1 concerned and I can only, I believe, challenge the actual
2 settlement itself first. I have to do that first. I have to
3 undo that settlement first, before you can get to anything
4 else.

5 So, yes, your Honor can do as it pleases here, as you
6 stated, but that's my position is that I'm not necessarily
7 saying that I'm going along with it. I'm simply saying I don't
8 see how I can stop it right now.

9 THE COURT: All right. I'm not clear on what you
10 mean by trying to undo the settlement. Right now what's in
11 front of me are two motions, which I'll deny as moot, and a
12 proposed order which says -- now I'm reading from docket entry
13 262-1. It says -- I'll paraphrase -- the action, its claims
14 and counterclaims, pursuant to a settlement agreement dated
15 2-5-20, is hereby discontinued without prejudice and without
16 costs as between Can't Stop and what we've been calling the
17 Sixuvus defendants. And it says, upon the Court discontinuing
18 the action, the clerk shall return the \$50,000 bond. I think
19 that's actually moot because I already ordered that all except
20 3,000 and change of it be returned. And I guess the only --
21 and then the second thing it says in the order is the action is
22 dismissed with prejudice and each party shall bear its own fees
23 and costs. So if I enter that, then the only thing left
24 percolating, and I imagine I can still adjudicate it, is
25 whether the bond -- whether the \$3,520 which remains in the

1 bond should in fact be paid out to Ms. Willis.

2 MS. WILLIS: Yes, your Honor. I'm not releasing that
3 yet because we still have that before the Court of Appeals on
4 that issue and it will be decided I guess at some point.

5 THE COURT: All right. Didn't the Court of
6 Appeals -- I thought the Court of Appeals decided that issue.

7 MS. WILLIS: No, your Honor. I think you may be
8 confusing it with the fact that I initially filed an appeal and
9 then the Court of Appeals said, you know, it couldn't be that,
10 it had to be a writ of mandamus. And so the writ is being
11 considered now. It's on regular track right now.

12 THE COURT: All right. The last thing I have on the
13 docket from the Court of Appeals was, I think, that -- this is
14 on May 29th -- it's dismissing the appeal because there was not
15 a final order. If that relates to the issue of the bond, we
16 can continue -- we can conclude the litigation on that and then
17 I'll issue a final order, and if Ms. Willis wants to appeal
18 from it or if the Sixuvus defendants want to appeal from it,
19 they can.

20 Let me ask Mr. Levy, do you have any problem with the
21 proposal that I enter your order, the proposed order, with item
22 number 1 tweaked and deny both motions as moot?

23 MR. LEVY: No. That's fine with us. That's fine.

24 THE COURT: And Ms. Matz?

25 MS. MATZ: No, I don't believe we have any issue with

1 that. There's just two things I would like to be in the order.
2 One is that, when you read it, and I'm assuming it's just a --
3 I apologize -- you were reading it wrong. The first time, you
4 said without prejudice. The order actually says with
5 prejudice.

6 THE COURT: You're right. It says with prejudice and
7 without costs. So that's my mistake, yes.

8 MS. MATZ: Yes.

9 And the only other thing is we want there to be just
10 something noted in the record that the motion to intervene was
11 withdrawn and, therefore, denied as moot.

12 MS. WILLIS: No, that was not. It's moot.

13 THE COURT: Well --

14 MS. WILLIS: The Court's already stated that. It's
15 being denied as moot, basically. That's my position.

16 THE COURT: Well, if you're taking the position that
17 you have nothing to intervene in, which I gather is a change
18 from the position you took in the motion, I'll indicate that
19 it's denied as moot based on the proposed Intervenor's position
20 as expressed at this conference today. I'll put it that way.

21 MS. WILLIS: No. It's based on the motion to -- for
22 dismissal and the settlement. That's what that's based on.
23 It's based on that, your Honor, and nothing else. It's moot,
24 but it's not based on what your Honor just stated. It's based
25 on in light of the settlement as well as the order before the

1 Court. So that the record's clear here.

2 THE COURT: Well, I want to make sure it's clear
3 since I'm having trouble understanding.

4 What I propose to say is that it's denied as moot
5 based on your position as expressed today that the settlement
6 between plaintiff and defendants renders intervention moot. Is
7 that fair to say?

8 MS. WILLIS: It is, yes, yes. I like that.

9 THE COURT: All right. I'll say that. And then I'll
10 deny the cross-motion as moot in light of the denial of the
11 motion to intervene is moot. And I'll enter the order, which
12 is document 262-1, just without subparagraph 1.

13 And then the last question is what we should do at
14 this point regarding the \$3,250. Let me just go back and
15 remind myself how we left that.

16 And, Julia, if you remember, feel free to remind me.

17 MS. WILLIS: Your Honor, we still have to adjudicate
18 that. The Court still maintains jurisdiction over that issue.
19 And again, it was going to resolve itself anyway. It's
20 going to resolve itself.

21 THE COURT: I'm sorry. I lost you after it's going
22 to resolve itself.

23 MS. WILLIS: I'm sorry. It's going to resolve itself
24 soon anyway, that 3000-some-odd dollars. So either I will get
25 to keep it or it will go back to them. We'll see which way it

1 goes here. The Court still remains -- you know, maintains
2 jurisdiction over that issue, anyway. It's an ancillary thing
3 here.

4 THE COURT: Yes, I agree. I'm just trying to
5 remember what I said when I ruled initially on that issue. And
6 I said this 3,250 I'm hanging onto because it may be that
7 you're entitled to it, and I just can't remember what I said
8 about how we were ultimately going to determine that. I guess
9 I was going to wait until the end of the case. But you know
10 what I'm going to do? I'm going to --

11 MS. WILLIS: That's exactly what your Honor said,
12 that it would -- it was going to actually resolve pending the
13 end of the case; at that time, a determination would be made as
14 to whether or not I keep that amount, or even more, I guess.
15 If the Court feels, it could decide I get more. But your
16 Honor, as it stands now, could decide that I get to keep that.
17 But, again, I see that as a very minor little ancillary thing.
18 I'm not going to let that --

19 THE COURT: I agree with you, but loose ends need to
20 be tied up.

21 I'm just going to pull up my notes from that ruling.
22 I don't know if it's been transcribed yet. Maybe it has. It
23 may be that nothing further is required and I should just order
24 that the money go to Ms. Willis, but let me -- if I remember,
25 there were some open issues.

1 MS. WILLIS: There's one other open issue and that is
2 my -- I think I put up a thousand dollars, something like that,
3 at some point, also, that has to be released, too.

4 THE LAW CLERK: Hi, Judge. I'm sorry for leaving you
5 hanging. I'm having a slight technical glitch on my end, but I
6 will chime in as soon as I can.

7 THE COURT: Okay. I'm trying to find where I would
8 have -- where we would have hidden that ruling in this record.
9 There's so much -- not in the record, in our internal computer
10 system. There's so much in the case. I've got so many
11 folders. I'm looking for my decision on the issue of the bond.
12 Let me just find the date.

13 Does anybody remember -- oh, yes. February 6th I
14 ruled on it. Oh, we have a transcript of it, so let me just
15 look at that. That will be easier. Just bear with me a minute
16 while I refresh my memory.

17 (Pause)

18 THE COURT: Okay. So I limited the recoverable costs
19 to those that arose from the operation of the injunction rather
20 than the costs of litigating it. And there were two items from
21 the petition that seem to fit that category. One said e-mails
22 with client and graphic artist on December 14th and another one
23 on December 15th said e-mails with client re fixing online
24 material. The latter seems appropriate. The former, e-mails
25 with client and graphic artist, I wasn't sure about because I

1 said that figure might have to be reduced because that line
2 item could include other activities unrelated -- or, no, I'm
3 sorry. I'm misquoting myself. What I said was that those
4 figures might have to be reduced because the line items could
5 include and at least one of them does include other activities
6 unrelated to graphic design or fixing online material.

7 THE DEPUTY CLERK: Judge, this is Walter. I just
8 e-mailed you the notes, Judge, from the ruling.

9 THE COURT: All right. I'm reading now from the
10 transcript. You're a better man than I am if you could find
11 them on our computer. Thank you.

12 So what I said was Intervenor is entitled to the
13 presumption of recovery only as to some fraction of the \$3,520.
14 And then I said -- I went on to address the defendants'
15 argument that I can't determine that Intervenor was wrongfully
16 enjoined because there was no final decision on the merits and
17 because the final decision on the merits would only be made
18 after a full trial, not after a PI hearing. It was too soon to
19 determine that the Intervenor was wrongfully enjoined. I found
20 defendants showed a likelihood of success, but I didn't make a
21 final adjudication. And since the defendants had not yet been
22 given a full opportunity to present their case, the bond
23 recovery motion was denied without prejudice to renewal after a
24 final adjudication.

25 So now we're not going to have a final adjudication,

1 so maybe I'm wrong that I retain jurisdiction over that issue.

2 MS. WILLIS: Actually, your Honor, I had a case on
3 that. Actually, I think I saw a month ago the Court does
4 actually retain jurisdiction in the event that the case is
5 dismissed, actually. I have the case. I don't have it in
6 front of me, but, yes, I'm confident that the Court does. But,
7 your Honor, you know, you decide it as you will here. It's up
8 to you.

9 THE COURT: Well, you know what I would suggest?

10 I don't know what your client is thinking, Ms. Matz,
11 but it seems to me that I could ask the parties to submit
12 authority on whether I can -- you know, about what I should do
13 with what remains in the bond given that we won't have a final
14 adjudication on the merits, but I'm going to make a suggestion
15 that you and Ms. Willis try to come to an agreement on her
16 retaining some, if not all, of that money. It seems to me it
17 would cost less to do that than to litigate whether or not I
18 still have the ability to do anything with that money. I'm
19 going to suggest that the parties agree that \$2,000 of what
20 remains on the bond go to Ms. Willis and the remainder go to
21 the Sixuvus and that we all get on with our lives.

22 I know you would have to check with your clients, but
23 is that something you think you might recommend, Ms. Matz?

24 MS. MATZ: I don't want to say whether I would
25 recommend it or not, just speaking candidly, your Honor, but

1 let me just talk about it with my client after this call. And
2 might I propose that perhaps we touch base with the Court in a
3 few days or a couple days.

4 THE COURT: Sure. Let's do this. Let's hope that
5 you can resolve this with Ms. Willis. If not along the exact
6 lines I suggested, something that will allow both sides to walk
7 away with their heads held high and will save everybody the
8 cost of litigating the issue of what I should do with that
9 money, which literally will cost more than what the amount of
10 money is. Why don't you send me a letter, Ms. Matz, on June
11 30th telling me either you've resolved it with Ms. Willis or
12 setting a schedule, which hopefully you can agree upon, for
13 each of you to submit letters regarding what I should do with
14 that money. And I won't close the case pending that one last
15 open item. Or I'll note on the docket that I retain
16 jurisdiction only over that one open item.

17 Does that sound like a plan?

18 MS. WILLIS: It's okay with me, your Honor.

19 MS. MATZ: That sounds good to us, your Honor.

20 THE COURT: All right.

21 I'm really hoping that I'll hear that the parties
22 have resolved this one tiny outstanding matter and that this
23 litigation will end not with a bang, but with a whimper, which
24 is usually how it happens. So I appreciate everybody's
25 clarifications of their positions today, and I'll look forward

1 to hearing from you on Tuesday.

2 Anything else we should talk about now?

3 MS. WILLIS: Your Honor, the order of -- I have a
4 thousand -- I can't even really remember the amount anymore
5 that was -- I put up the bond -- have to order that release to
6 me, please. I don't know the amount anymore. It was an amount
7 that I put up.

8 THE COURT: Why don't you -- I just, as I'm sitting
9 here, don't remember what exactly it was for, but if you
10 include it in -- the letter that I'll get from Ms. Matz on
11 Tuesday should be a joint letter with everybody's positions,
12 and if the parties agree to the disposition of that thousand
13 dollars as part of their conversation, great, and if they
14 don't, remind me what it was for and what each party proposes
15 that I do with it.

16 And maybe, Mr. Levy, I don't want to draft you as a
17 mediator, but maybe you can be helpful to both sides here, if
18 you so choose. It would be (INAUDIBLE), of course. And if you
19 can flag for me where on the -- you know, if you need to, in
20 that joint letter on Tuesday, flag for me where on this
21 substantial docket I'll find the relevant materials relating to
22 the thousand dollars. But hopefully you can fold it into your
23 discussions about the 3,250.

24 All right. So I'll say that I retain jurisdiction
25 only over I'll say the two bonds that were posted.

1 Okay. Thank you all very much. I hope everybody is
2 safe and healthy and remains that way.

3 MR. LEVY: Before you go, if we want to order the
4 transcript of this, how do we do that now?

5 (Discussion off the record)

6 THE COURT: Thank you all. Take care.

7 MR. LEVY: Thank you.

8 MS. MATZ: Thank you.

9 MS. WILLIS: Thank you.

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